



## Office of the Attorney General

State of Texas

September 17, 1998

DAN MORALES

ATTORNEY GENERAL

Mr. Helmut (Hal) Talton  
Associate General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Building  
125 E. 11th Street  
Austin, Texas 78701-2483

OR98-2221

Dear Mr. Talton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118133.

The Texas Department of Transportation (the "department") received a request for information regarding the appraisals of a parcel of land belonging to the requestor on U.S. 75 and Interstate 635. In response to the request, you submit to this office for review a copy of the information at issue. You claim that the documents are excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.105 provides an exception from disclosure for information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

This exception protects a governmental body's planning and negotiation position with respect to particular transactions. Open Records Decision No. 357 (1982). Section 552.105 is applicable not only to particular appraisal reports and purchase pricing for real estate, but also to information that pertains to such reports and pricing. Open Records Decision No. 564 (1990).

In this instance, you explain that the department "hired two separate real estate

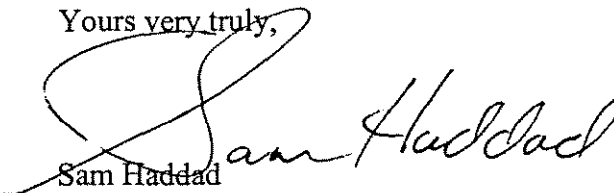
appraisers to perform appraisals of the property's appraised value." Based on the submitted information, the department has provided to the requestor a copy of the second appraisal, but not the first. You have cited to section 21.0111 of the Property Code to support your argument that the requested information should be withheld under section 552.105 of the Government Code. Section 21.0111 provides in relevant part as follows:

(a) A governmental entity with eminent domain authority that wants to acquire real property for a public use shall disclose to the property owner at the time an offer to purchase is made *any and all existing appraisal reports produced or acquired* by the governmental entity relating specifically to the owner's property and used in determining the final valuation offer.

(Emphasis added). You argue that section 21.0111 requires that only "the appraisal reports used in determining the final valuation offer" are to be disclosed to the property owner.<sup>1</sup> Based on your interpretation, you have released only the second appraisal to the requestor, because you argue that the department "only used data contained in the second appraisal." We disagree with your interpretation. We believe that each appraisal *produced or acquired* by the department during the appraisal process, "relating specifically to the owner's property," is "*used* in determining the final valuation offer" made to the property owner. Therefore, since the department obtained the appraisals for the property at issue during the appraisal process, we conclude that, pursuant to section 21.0111(a) of the Property Code, the requestor is entitled to a copy of the first appraisal.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

  
Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/mjc

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<sup>1</sup>The requestor indicates in his letter to the department that the department has made an offer for the property at issue, and that he has received a copy of the second appraisal.

<sup>2</sup>Information specifically made public by statute may not be withheld from the public pursuant to the exceptions to required public disclosure listed in the Open Records Act. Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). See also *Houston Chronicle Publ'g Co. v. Woods*, 949 S.W.2d 492, 497 (Tex. App.- Beaumont 1997, orig. proceeding) (where language of statute making information public is unambiguous, such information must be released "without any exceptions").

Ref.: ID# 118133

Enclosures: Submitted documents

cc: Mr. Robert Jaeckle  
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(w/o enclosures)